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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

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Applications for Consent  
to the Transfer of Control of Licenses and  
Section 214 Authorizations from  
Ameritech Corporation, Transferor, to  
SBC Communications Inc., Transferee

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 98-141

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

Pursuant to Public Notice DA 98-1492 released on July 30, 1998, MCI Telecommunications Corporation ("MCI") submits these comments concerning the proposed protective order submitted by SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech").

"[T]he decision of what type of access to permit for reviewing confidential material is a 'balancing judgment, and there are costs on both sides of the equation.'"<sup>1</sup> The Commission has struck different balances in different proceedings, including different merger proceedings. *See MCI/WorldCom Order*, ¶¶ 6, 7, 13 (discussing TCI/Primestar, AT&T/McCaw, and BA/NYNEX protective orders). "This decision must be made based on the circumstances presented in the instant proceeding . . . ." *Id.*, ¶ 6.

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<sup>1</sup>In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Order Adopting Protective Order*, ¶ 6, DA 98-1072, CC Docket No. 97-211 (rel. June 5, 1998) ("*MCI/WorldCom Order*") (citation and footnote omitted).

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SBC and Ameritech's proposed protective order is substantively identical to the protective order entered by the Commission with respect to specific materials that MCI and WorldCom, Inc. ("WorldCom") submitted to the Department of Justice ("DOJ") in connection with DOJ's pre-merger review process. *See MCI/WorldCom Order*, ¶ 1. The issue presented by SBC and Ameritech's proposal is whether the circumstances in this proceeding justify protection as strict as the protection afforded to the limited, specific material subject to the protective order adopted in the *MCI/WorldCom Order*.

MCI objects to one provision in their proposed protective order. The proposed order would deny access to protected documents and information by in-house economists who are not involved in competitive decision-making. SBC and Ameritech have not justified a denial of access by such in-house economists on the same terms as the outside and in-house counsel with whom they work. In the MCI/WorldCom merger proceeding, the Common Carrier Bureau declined, without explanation, to allow in-house economists to have access, and it did not specifically consider whether it would be appropriate to grant access only to those in-house economists who were not engaged in competitive decision-making. *MCI/WorldCom Protective Order*, ¶ 5.

MCI plans to rely on the expertise of in-house economists in evaluating whether the proposed SBC-Ameritech merger would be in the public interest and in preparing MCI's comments. In the Model Protective Order adopted earlier this week, the Commission ordinarily permits in-house economists to have access to confidential information, and it indicated that it would limit access to documents to outside counsel

and experts only in “rare instances.”<sup>2</sup> More specifically, the Commission has permitted MCI’s in-house economists to have access to competitively sensitive information subject to a protective order in a variety of proceedings.<sup>3</sup> Notably, no party to any of these proceedings contended that any in-house economist did not abide by the terms of the protective order or that the producing parties were harmed by the release of confidential information to in-house economists subject to the protective order. *See MCI/WorldCom Order*, ¶ 7 (noting the same point with respect to prior cases permitting access by in-house counsel). If SBC or Ameritech has any concern about disclosure to any individual in-house economist, Paragraph 5 of the proposed protective order provides a mechanism for them to object. The July 29, 1998, letter submitted by SBC and Ameritech provides

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<sup>2</sup>In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, ¶ 26, GC Docket No. 96-55 (rel. Aug. 4, 1998). To the extent that the documents for which SBC and Ameritech seek protection involve “specific future business plans,” MCI’s proposal “minimize[s] the potential for inadvertent misuse of such information” by limiting access to in-house economists not involved in competitive decision-making. *See ibid.*

<sup>3</sup>*See, e.g.,* In the Matter of Federal-State Joint Board on Universal Service, *Protective Order*, CC Docket No. 96-45, DA 98-1490 (rel. July 27, 1998); In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, *Protective Order*, CC Docket No. 98-121, DA 98-1362 (rel. July 9, 1998); In the Matter of MCI Telecommunications Corp., *et al.*, v. Bell Atlantic - Delaware, Inc., *Order*, DA 98-1195 (rel. June 19, 1998); In the Matter of Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, *Order*, CC Docket No. 94-97, FCC 98-89 (rel. May 15, 1998); In the Matter of MCI Telecommunications Corp. v. Pacific Bell, *Order*, DA 97-1411 (rel. July 11, 1997).

no basis to deny access to in-house economists who are not involved in competitive decision-making.

In addition, SBC and Ameritech have not shown that the information that they intend to submit pursuant to their proposed protective order is so sensitive that it requires denial of access to in-house economists not involved in competitive decision-making. In contrast, MCI and WorldCom demonstrated that the documents that would be subject to the MCI/WorldCom protective order contained unusually confidential and critical information that was more competitively sensitive than the information involved in other protective order decisions. Reply Comments of WorldCom, Inc. and MCI Communications Corporation, at 1-2, CC Docket No. 97-211 (filed May 13, 1998).

For these reasons, Paragraph 3 of the proposed protective order should be amended to provide for access by in-house economists who are not involved in competitive decision-making.

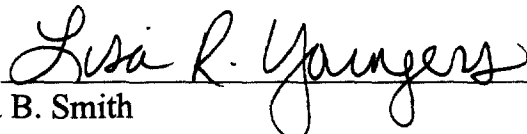
Finally, MCI emphasizes that these comments are limited to application of the proposed protective order to the documents identified by SBC and Ameritech in their July 29, 1998, letter to the Commission. MCI understands those documents to include only the initial Hart-Scott-Rodino submissions to DOJ, including so-called Item 4(c) documents involving the effect of the merger on competition in any market. If SBC or Ameritech seeks to submit additional documents for Commission review, a different protective order striking a different balance may be appropriate, and the Commission should give parties an opportunity to comment on the particular issues that any new

request for protection may raise. Of course, MCI reserves its right, after it reviews individual documents pursuant to the protective order, to seek (a) reclassification of documents as non-confidential under Paragraph 2 of the proposed protective order or (b) disclosure outside the terms of the protective order pursuant to Paragraph 6.

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Dated: August 6, 1998.

## CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that on this 6th day of August 1998, I served by first class United States Postal Service, postage prepaid, a true copy of the foregoing Comments, upon the following:

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